

**Hearing Script of the Honorable Jeff Miller  
Chairman, Committee on Veterans' Affairs  
U.S. House of Representatives**

***"An Examination of VA's Misuse of Employee Settlement Agreements."***

September 14, 2015  
334 Cannon HOB  
10:30 A.M.

Good morning and thank you for being here at today's hearing entitled, "An Examination of VA's Misuse of Employee Settlement Agreements."

Since 2013, when this Committee began examining accountability measures in earnest, we have seen a reoccurring practice in which VA frequently enters into settlement agreements with employees who are resigning or who have been proposed for disciplinary actions as opposed to taking the steps to allow those personnel actions to remain final.

These agreements are binding legal documents between VA and the employee which lay out the terms for, in most cases, the employee's departure from VA and their agreement to drop any current grievance or appeal to the Merit System Protection Board (MSPB), the U.S. Equal Employment Opportunity Commission (EEOC), the Office of Special Counsel (OSC) or other entities.

While in theory these agreements are a useful tool to avoid lengthy administrative or legal disciplinary processes, it is clear that the potential overuse of these agreements stems from burdensome civil service laws that make it difficult for VA managers to appropriately discipline VA employees.

In an effort to make the disciplinary process more convenient, VA often agrees to pay out thousands of taxpayer-funded dollars both to the employee and their legal representation, as well as other benefits for the employee to simply just “go away.”

It is because of this Committee’s continued investigation into personnel matters at VA, and my own healthy skepticism about the lack of transparency and VA’s potential overuse of these agreements, that last October I sent a letter to Secretary McDonald requesting copies of every settlement agreement that VA had entered into since July, 2014.

Earlier this year, VA complied with my request and provided copies of 208 settlement agreements for the Committee’s review.

An analysis of these documents paints a disturbing picture of VA’s use of these agreements and raises more serious questions about who really benefits from these settlements; is it the taxpayers and veterans or is it the wayward employees.

In 72% of the settlements reviewed, the employee received monetary compensation directly to them and/or their attorney which totaled just over \$5 million. The average amount that VA paid to employees as part of their settlement was \$24,305, and the largest sum of money received by one individual was \$225,000.

Another concern beyond just these large monetary payments made by VA is that in 96% of the settlements we reviewed, the discipline that was proposed or finalized against the employee was not included in their permanent employment record.

By allowing these records to be left clean and by allowing employees to negotiate for a positive or neutral reference for future employers, VA management has made it much easier for the employee to obtain a job in the future in another Federal agency or the private sector irrespective of their behavior at VA that caused their termination or resignation.

For example, in one particular case, an employee was proposed for removal due to reports of hostility in the work place; the employee, however, received \$80,000 and a clean record.

I know that Ms. Bradley will remark that VA's use of these agreements is supposedly in line with other Federal Agencies. I guess I am reminded about the old adage I learned as a child about the jumping off a bridge just because everyone else was doing it. I also wonder what type of message VA is sending to other good employees when they allow bad employees to settle for thousands of dollars, just because it would be too expensive or embarrassing to litigate.

I understand that the pressures being placed on VA managers to make the right call in these situations is immense, and there will always be a judgement call to make as to whether these settlement agreements are warranted, but the review of these documents raise three important questions that I hope will be answered today.

First, what type review or training has VA Central Office provided to managers in the field on how to use these agreements? What part of the budget are these damages paid out of and who reviews these payments?

Second, are these settlements being used as way to “buy off” or “silence” whistleblowers whose choice is between accepting monetary settlements or retaliation and abuse? I know of one case where this appears to be happening where a whistleblower has been offered over \$300,000 to quit and I am interested to hear from Mr. Bachman from OSC about this specific case and other similar instances.

And thirdly, and most importantly, it would seem logical that anytime that VA agrees to pay out damages to employees that this is at least a tacit admission of guilt on behalf of the Agency. In these circumstances what type of review or proposed discipline does VA provide to the employee who may have retaliated against whistleblowers or participated in prohibited personnel practices which created the need for these agreements in the first place?

While I understand that simply settling with an employee in certain circumstances can be a great tool for the Department due to current lengthy disciplinary processes required by the broken and antiquated civil service system, it is this Committee’s job to ensure that they are being used judiciously and with great care of taxpayer dollars.

With that I yield to Ranking Member Takano for any opening statement he wishes to make.